

CRIMINAL RECORD CHECK PROGRAM

Frequently Asked Questions

Effective July 1, 2010, individuals with convictions for felony theft (KSA 21-3701) will be prohibited (5-year prohibition, see #28) from employment in any facility licensed under the Kansas Adult Care Home Act or Kansas Home Health Licensure Law in the State of Kansas pursuant to K.S.A. 39-970 and K.S.A. 65-5117 unless employed by an adult care home or home health agency on July 1, 2010 and while continuously employed by the same adult care home or home health agency.

1. What is a “criminal record check” and why is it a law?

The criminal record check is a review of the information on file with the Kansas Bureau of Investigation (KBI). The KBI collects information from police arrest reports, prosecution data, court determinations, and Department of Corrections. Much of this information is stored electronically by the KBI, but some is on paper. The law was established to prevent persons with serious criminal histories from working in any facility licensed under the Kansas Adult Care Home Act or Kansas Home Health Licensure Law. The basic premise is that people who have serious criminal histories, especially crimes against persons, should not be responsible for the care of the frail or elderly citizens of Kansas. The legislature made it a law as a part of the protection of the health and safety of residents and consumers of service(s).

2. What information is required on a criminal record check request and who sends it to the KBI?

The KBI has certain standard identifying information that is then compared to information on record. For example, a name (first, middle, last, suffix), alias or previous name(s), date of birth, gender, race, addresses, Social Security number all are important in order to distinguish people.

The law requires the person who operates the applicable facilities to request that KDADS compare the identifying information of the individual recently employed or being considered for employment, to information available from the KBI criminal history records. The operator/administrator sends the request to KDADS, and then KDADS sends the request to KBI. KDADS staff then access the results of the inquiry electronically. If there is a “match”, KDADS sends the portions of the criminal history record information (which are allowed to be released under the law), to the requesting, applicable facility.

3. Is there a difference between the criminal record information obtained through KBI’s online service and the information accessed from KBI through KDADS?

YES. The law specifies that KDADS accesses criminal history information through KBI records. Under these laws, certain juvenile convictions would constitute a prohibition of employment, which is one reason applicable facilities are required to access information from KBI through KDADS. These laws allow KDADS access to juvenile records. Most other sources you as an operator/administrator may access, including KBI’s online service, would not allow access to juvenile records.

4. Can we use our own (or corporation’s) CRC request form?

NO. Use the form prepared and provided by KDADS:

http://www.kdads.ks.gov/LongTermCare/HOC/downloads/CRC_Request_form.pdf

5. Is criminal record information obtained from a private contractor allowed as a substitute for criminal records requested through KDADS?

NO. The statute requirement is specific and cites KDADS as the conduit for the information. There is no provision to allow the use of criminal record information from a private contractor. Also, criminal history information obtained from private contractors is not reported to the Kansas Nurse Aide Registry.

6. What if an applicant does not provide all alias and former names?

Although there is no guarantee that the information provided is complete and accurate, you must make reasonable efforts to obtain complete information. The goal should be to try and obtain any name(s) the individual has ever used.

7. How is a person’s race identified? Options to select Hispanic or Mexican are not provided as choices?

The race categories are in accordance with standards conveyed by the KBI. Accordingly, Hispanic, Spanish or Mexican is considered ethnicity (not race). The person for whom the record check is performed should be identifying his or her own race category.

8. What is the legality of asking about juvenile convictions? I have 15-16 year-old kids working in laundry, housekeeping and the kitchen. Do I have the right to submit criminal record check requests on juveniles?

YES. Not only do you have the right, but it is required according to the law.

9. What exactly is the employment date that allows long-term employees to be exempt from the criminal record check requirement?

Those employees who have had continuous employment **on or before July 1, 1993** are not subject to the record check requirement.

10. Are annual record checks for employees required by KDADS?

NO. There is not an annual requirement. However, if a facility or agency sends in requests on employees annually, KDADS will process the request.

11. Is it necessary to maintain files for criminal history information?

Although KDADS does not specifically require that a file of this information is maintained, documentation of compliance is frequently requested during the survey process. Organized, updated files would serve as a benefit to the facility. Further, the law requires that the information is kept confidential and provides for monetary penalties for violating these confidentiality requirements. Effective July 1, 2003, KDADS was required to provide the operator/administrator with the juvenile criminal history information concerning convictions under K.S.A 21-3701. The law requires that juvenile criminal history is to be kept strictly confidential and provides for monetary penalties for violating these confidentiality requirements as well. Facilities should seek legal counsel for general file maintenance advice.

12. Are we permitted to disclose criminal history information to the person who is the subject of the request?

Yes, however legal counsel should be sought for specific security requirements concerning criminal record check request information.

13. Are (licensed adult care home) administrators exempt from the CRC requirement?

YES. However, there are other laws which require record checks under the licensing board's policies. Effective July 1, 2010 operators/administrators **may** submit criminal record check requests for licensed staff (i.e. Administrators, LPN's RN's) as well as volunteers but are not required to do so. Additionally, they will not be subject to the prohibitions established in K.S.A 39-970 and K.S.A. 65-5117.

14. If a criminal record check request is submitted on a new employee, will it be necessary to submit future CRC's on that employee if continual employment is maintained?

It is the responsibility of the operator/administrator to comply with the conditions of the law. The frequency of rechecks is up to the operator/administrator. KDADS will provide the service as indicated by law and maintains a record of CRC requests previously submitted. This information is integrated into the Health Occupations Credentialing data base and is available on certified staff through the Kansas Nurse Aide Registry.

15. When a notice of employment prohibition is received, is the prohibited employee permitted to continue working until a replacement has been hired? Can a prohibited individual continue working at the facility or on the grounds as long as there is no direct care or contact with the residents?

No. Compliance with the law indicates that "no person shall knowingly operate an adult care home if, in the adult care home, there works any person who . . ."

The law provides for civil liability protections under subsection (d) . . . "no adult care home, the operator/administrator or employees of an adult care home or of an employment agency, shall be liable for civil damages resulting from any decision to employ, refuse to employ, or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if . . . [acting] in good faith to comply with this section."

16. How will KDADS enforce employment prohibition?

Enforcement will follow regular survey protocols. This means that the operator/administrator must have a procedure in place to request criminal record checks through KDADS. If a notice of prohibition is generated based upon a criminal conviction which would prohibit employment, the administrator of the requesting facility/agency will be sent the original Notice of Employment Prohibition.

17. "Consumer Directed Services Program" allows clients the choice of using a friend or relative as their caretaker. What if the person responsible for hiring decisions insists on employing a particular individual in spite of their criminal history or even employment prohibition listed on the Kansas Nurse Aide Registry?

This program refers to certain in-home health care services which may be coordinated or reimbursed by state or federal health care funds. Persons providing in-home services are contracted by the homebound person to provide care to that person. The home health agency does not procure or select which provider serves a client under the Consumer Directed Services Program. The caretaker is employed by the individual and is not an employee of a home health agency. The law requiring criminal record checks for applicants or employees of an adult care home or home health agency currently has no provisions requiring record checks on individuals hired through the Consumer Directed Services Program.

18. What is the criminal record check requirement for employment (staffing) agencies in the State of Kansas?

Both laws (KSA 39-370 and 65-5117) address this under subsection (d), "... any employment agency which provides employers with written certification that such employees are not prohibited from working the adult care home under this act." KDADS receives and processes requests from employment agencies. The requestor will be notified of any matches of prohibited offenses.

19. Does this law apply to the hospital long-term care units, assisted living, residential care facilities,

The way to know what facility must comply with this law is to answer the following questions:

Is the facility licensed under the Kansas Adult Care Home Act or Kansas Home Health Licensure Law? (Yes = the law applies) Is the facility licensed as a Kansas Hospital or Medical Care facility? (No = the law does not apply)

In addition, remember that this is a KANSAS LAW -- it is not part of federal reimbursement programs such as Medicare or Medicaid.

20. What about obtaining criminal history information in other states or federal crimes?

The law states, under subsection (d), "... for the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas ... until the secretary determines [that] ... such information could reasonably be ... obtained within a two-week period." The law is constructed such that it is the operator's/administrator's responsibility to not employ anyone with a prohibited conviction. Therefore, if an operator/administrator has evidence or can obtain evidence that the person was convicted of an applicable offense from an outside state, a prohibition notice could be issued in Kansas based on that information.

21. If criminal history information was recently obtained by a Kansas City, Missouri facility, would that satisfy the Kansas CRC requirement?

NO. Kansas criminal records information would not have been obtained. However, if confirmation of a conviction from another state is obtained, and the offense the individual was convicted of matches an offense which prohibits employment in Kansas, then that individual is prohibited from employment in an adult care home or home health agency.

22. If an employee is terminated because of information received in a CRC result, will such an action count against the facility for unemployment insurance purposes?

This question should be brought to the Department of Human Resources.

23. Prohibited individuals are flagged on the Kansas Nurse Aide Registry. As long as KNAR confirmation is obtained prior to hiring, why is it necessary to pay for criminal record check requests through KDADS? Aren't they the same thing?

No, they are not the same thing, although a portion of CRC information is integrated to the Kansas Nurse Aide Registry. Criminal record check results provide the details of criminal history information on file with the Kansas Bureau of Investigation. KNAR confirmation provides current employment status of Certified Nurse Aides, Medication Aides and Home Health Aides. Both CRC requests and KNAR confirmation are required at the time of employment.

24. The statute refers to "anyone who works" in an adult care home ... what about the person who mows the lawn, or a contractor who does plumbing or painting, does the law apply to them?

This is interpreted to mean anyone who regularly works, not including an incidental or emergency repair person or episodic contract labor. If there is any doubt as to whether a person is covered by the law, a record check should be conducted.

25. If criminal record check requests were recently completed by a facility using KBI's online service (or another service provider), is it necessary to submit CRC requests again on the same applicants, through KDADS?

YES. The intent is to have a single-source for accessing criminal records history information, which the law identifies as KDADS and KBI. Part of the rationale for this requirement is standardization of record information. What may be accessed through county law enforcement or an independent agency does not include juvenile records. Under the current law, select juvenile convictions (history) would result in prohibition of employment.

26. Are drug offenses prohibited under the law?

NO. The main prohibitions are those convictions dealing with crimes against persons, sexual crimes, and crimes affecting family relationships.

27. Is there a list of offenses which prohibit employment?

YES. The list of offenses which prohibit employment (5 year or permanent prohibition) is available online at: http://www.kdads.ks.gov/LongTermCare/HOC/ach_adm_resources/cbc/offenses.pdf

Please note that it is not the operator's/administrator's responsibility to sort through that level of detail to determine whether an individual should be prohibited from employment. When a possible matched record is found, the CRC staff researches and confirms the conviction data, initiates employment prohibition (if applicable) and notifies the requesting facility. The requesting facility is not required to analyze criminal convictions and employment prohibitions.

28. How will KDADS determine when a person is no longer prohibited, since the amended law allows someone to work if five (plus) years have elapsed since completion of their sentencing, etc.?

If no verification is available through the KBI, the prohibited individual will have to contact the court of jurisdiction or Department of Corrections to request that the court journal related to the prohibiting offense, be mailed or faxed (785 286-3075) to the criminal record check staff at KDADS. Remember that five years must have elapsed since the completion of all sentencing requirements including incarceration, parole, probation and restitution.